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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 632

RACHAEL BROWN, PETITIONER

v.

THE UNITED STATES OF AMERICA AND NELLIE BROWN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the District of New Jersey (R. 20-24) is reported at 72 F. Supp. 153. The *per curiam* opinion of the Circuit Court of Appeals for the Third Circuit (R. 26) is reported at 164 F. 2d 490.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 28, 1947 (R. 27). The petition for a writ of certiorari was filed February 27, 1948. The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The petitioner and William C. Brown obtained a license to marry, went through a marriage ceremony in the State of New Jersey at a time when William C. Brown was still married to Fannie Brown, and thereafter lived together as man and wife. At the time of the marriage ceremony, Fannie Brown had secured an interlocutory divorce decree in New Jersey which did not become final until approximately seven weeks later. Thereafter William C. Brown entered the armed forces of the United States, obtained insurance under the National Service Life Insurance Act of 1940 as amended, named petitioner as his wife and principal beneficiary, and died while serving with the armed forces. The questions presented are:

1. Whether petitioner became the lawful wife of Brown under the laws of New Jersey after the divorce decree became final.

2. Whether petitioner's status as Brown's widow, and therefore as a permitted beneficiary under Section 602(g) of the National Service Life Insurance Act of 1940, as amended, is to be determined by reference to applicable State law.

STATUTES INVOLVED

Section 602(g) of the National Service Life Insurance Act of 1940, c. 757, 54 Stat. 1008, 1010 (38 U. S. C. 802(g)), provides as follows:

> The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change

the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

Section 37:1-10 of the Revised Statutes of New Jersey (1940 Cum. Supp.) provides as follows:

> Nothing in this chapter shall be deemed or taken to render any common law or other marriage, otherwise lawful, contracted before December first, nineteen hundred and thirty-nine, invalid by reason of the failure to take out a license as herein provided. But no marriage contracted on and after December first, nineteen hundred and thirty-nine, shall be valid unless the contracting parties shall have obtained a marriage license as required by section 37:1-2 of this title, and unless, also, the marriage, after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by section 37:1-13 of tis title to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid, which shall always be construed as mandatory and not merely directory, shall render the purported marriage absolutely void.

STATEMENT

The facts have been stipulated and are not in dispute (R. 14-18). Prior to April 5, 1943, William C. Brown was married to Fannie Brown (R. 15). On that day Fannie Brown obtained an interlocutory divorce decree in New Jersey from William C. Brown, which by its terms was not to become absolute until three months later (R. 17-18). On May 8, 1943, petitioner and William C. Brown, who stated that he was single (R. 6), obtained a marriage license in New Jersey (R. 8). On May 16, a marriage ceremony was performed by an authorized minister in the state of New Jersey, and thereafter petitioner and William C. Brown lived together as man and wife (R. 15). On July 6, 1943 the decree in the divorce proceeding between Fannie Brown

and William C. Brown was made final and absolute (R. 15). William C. Brown later entered the military service of the United States and obtained insurance in the amount of $10,000, pursuant to the provisions of the National Service Life Insurance Act of 1940 (R. 15-16). Petitioner, described in this policy as the wife of the insured, was designated as principal beneficiary and Nellie Brown, the insured's mother, was named as contingent beneficiary (R. 16). On November 19, 1944, William C. Brown died at Camp Kilmer, New Jersey (R. 16). Six weeks thereafter petitioner filed a claim with the Veterans' Administration as beneficiary under the policy (R. 16). This claim was disallowed finally on August 19, 1946, on the ground that petitioner was not the lawful widow of William C. Brown (R. 16). The Veterans' Administration determined that Nellie Brown, the insured's mother who had been designated as contingent beneficiary, was entitled to the proceeds of the policy (R. 4, 13).

On August 29, 1946, petitioner brought this suit to have herself declared the lawful widow of the insured and entitled to all the benefits under the policy (R. 2-5). After answer and the filing of a stipulation of facts (R. 10-18), both sides moved for summary judgment (R. 19-20). The district court held that the marriage ceremony entered into between petitioner and William C. Brown was a nullity, and that their living together as man and wife, after the removal of the impediment to a legal marriage could not be recognized as a valid common law marriage under the laws of New Jersey (R. 22-23). The court concluded that petitioner could not be considered the lawful widow of the deceased insured and was not entitled to the proceeds of the insurance policy (R. 23). The Circuit Court of Appeals affirmed on the ground that the question was one to be determined under the law of New Jersey and that the district court had correctly applied that law (R. 26).

ARGUMENT

1. Although the question does not seem to have been decided by the New Jersey courts, the view of the courts below with respect to the petitioner's status as the widow of the insured seems properly to apply the New Jersey law. It is well established that a marriage ceremony performed in that State while one of the parties is still married is void. *Collins* v. *Voorhees*, 47 N. J. Eq. 555, 22 Atl. 1054; *Rooney* v. *Rooney*, 54 N. J. Eq. 231, 34 Atl. 682; *Sparks* v. *Ross*, 79 N. J. Eq. 99, 80 Atl. 932. Before 1939, the removal of this impediment to a valid marriage, as by the ripening of an interlocutory divorce decree into a final decree, under appropriate circumstances might result in the validation, as a common law marriage, of a previously invalid marriage. *Chamberlain* v. *Chamberlain*, 68 N. J. Eq. 414, 59 Atl. 813, affirmed, 68 N. J. Eq. 736, 62 Atl. 680; *Margulies* v. *Margulies*, 109 N. J. Eq. 391, 157 Atl. 676; *Robinson* v. *Robinson*, 83 N. J. Eq. 150, 90 Atl. 311, affirmed, 84 N. J. Eq. 201, 93 Atl. 699; *Dolan* v. *Wagner*, 96 N. J. Eq. 298, 125 Atl. 5; *Burger* v. *Burger*, 105 N. J. Eq. 403, 148 Atl. 167. However, section 37:1-10 of the Revised Statutes of New Jersey (*supra*, p. 3) abolished common law marriages contracted after December 1, 1939. This was accomplished by providing that no marriage contracted after that date was valid unless the contracting parties obtained a marriage license and unless a marriage ceremony was performed by a person authorized to solemnize marriages. Petitioner contends that her status as the insured's wife was not affected by this statute because a marriage license had been obtained and a marriage ceremony performed by an authorized minister. It was held below, however, that the statutory requirement that marriages be solemnized was not satisfied by going through a marriage ceremony that was considered a nullity under the New Jersey decisions. See cases cited *supra*. In the absence of contrary decisions by the New Jersey

courts, this interpretation does not warrant review by this court.

2. In addition to urging that her marriage to the insured became valid after the divorce decree had become final, petitioner suggests that it is outside the province of the Veterans' Administration to pass upon the validity of marriages in determining whether a named beneficiary is within the permitted classes. The questions whether Congress intended the Veterans' Administration to inquire into the marital status of a wife named as a beneficiary and, if so, whether it was to make its determination by reference to applicable state law, have not always been answered the same way in the federal courts. Unlike the Social Security Act, which specifies that state law shall govern in determining whether a person enjoys the status of a widow (Sec. 209(m), 42 U.S.C. 409(m)), no such reference to state law is contained in the National Service Life Insurance Act. There is some authority for the view that the status of a person held out by the member of the armed services to be his wife will not be questioned. *Schiefer* v. *United States*, 52 F. 2d 527 (W.D.N.Y.); cf. *Snyder* v. *Buck*, decided January 22, 1948 (D.D.C.) not yet reported. However, in most instances the validity of marriages has been tested against local law, both under the present statute and under earlier servicemen's legislation. *Barker* v. *United States*, 3 F. Supp. 545(S.D. Ala.) reversed on other grounds, 70 F. 2d 1002 (C.C.A. 5); *Rittgers* v. *United States*, 154 F. 2d 768 (C.C.A. 8); *United States* v. *Robinson*, 40 F. 2d 14 (C.C.A. 5); *Cummings* v. *United States*, 34 F. 2d 284 (D. Minn.); *Succession of Lynch* v. *United States*, 17 F. Supp. 674 (W.D. La.); *United States* v. *Layton*, 68 F. Supp. 247 (S.D. Fla.). There is no evidence that Congress intended to change this practice in the enactment of the National Service Life Insurance Act. If the purpose of Congress to limit beneficiaries to designated classes is to be carried out, an administrative inquiry

as to whether a named beneficiary actually falls within one of these classes seems indispensable. Since Congress has provided no standards for determining who may be considered a widow within the meaning of the National Service Life Insurance Act, the only available standards would seem to be those provided by state law. Congress has given no indication that it intended the Veterans' Administration to prescribe other standards. The court below, therefore, was correct in applying New Jersey law.

In any event, the removal of restrictions with respect to permissible beneficiaries under National Service Life Insurance policies maturing after July 31, 1946 (Insurance Act of 1946, Sec. 4, c. 728, 60 Stat. 781, 38 U.S.C., Supp. V, 802(g)), virtually eliminates the necessity for making further determinations of the legal status of beneficiaries. See *White* v. *United States,* 270 U. S. 175; *United States* v. *Garrison,* 39 F. 2d 225 (S.D. Fla.); *Gilman Heirs* v. *United States,* 290 Fed. 614 (M.D. Pa.), affirmed, 294 Fed. 422 (C.C.A. 3).

CONCLUSION

The decision of the court below appears to be correct. Furthermore the 1946 amendments to the National Service Life Insurance Act narrowly restrict the scope of the problem. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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